

INFRASTRUCTURE MANAGEMENT COMMITTEE

Council of the County of Maui

MINUTES

June 1, 2009

Council Chamber, 8th Floor

CONVENE: 9:00 a.m.

PRESENT: VOTING MEMBERS:
Councilmember Bill Kauakea Medeiros, Chair
Councilmember Joseph Pontanilla, Vice-Chair
Councilmember Gladys C. Baisa
Councilmember Sol P. Kaho'ohalahala
Councilmember Michael P. Victorino

NON-VOTING MEMBERS:
Councilmember Wayne K. Nishiki

EXCUSED: Councilmember Danny A. Mateo
Councilmember Michael J. Molina

STAFF: Michael J. Geers, Legislative Analyst
Camille Sakamoto, Committee Secretary
Leinaala Kihm, Executive Assistant to Councilmember Bill Kauakea Medeiros

ADMIN.: Milton M. Arakawa, Director, Department of Public Works (Item No. 10)
Gregg Kresge, Deputy Director, Department of Environmental Management
(Item No. 3)
David Taylor, Chief, Wastewater Reclamation Division, Department of
Environmental Management (Item No. 3)
David Galazin, Deputy Corporation Counsel, Department of the Corporation
Counsel

Seated in the gallery:
Walter Havekorst, Land Agent, Engineering Division, Department of Public
Works

OTHERS: One (1) additional unidentified attendee

PRESS: *Akaku: Maui Community Television, Inc.*

CHAIR MEDEIROS: . . .(*gavel*). . . Aloha and good morning, everyone.

COUNCILMEMBER KAHO'OHALAHALA: Good morning.

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COUNCILMEMBER BAISA: Good morning.

COUNCILMEMBER VICTORINO: Good morning.

VICE-CHAIR PONTANILLA: Morning.

CHAIR MEDEIROS: Seeing that we have a quorum, I am calling this Infrastructure Management Committee meeting to order. Today is June 1st, 2009 and it is now 9:01 a.m. I want to welcome all the Members to the meeting. This is our first Committee meeting after our budget deliberations. It seems like it's been a long time between budget and now, and so we're back to work doing our Committee work. I want to introduce the Members that are here this morning. We have Committee Vice-Chair Pontanilla. We have Gladys C. Baisa.

COUNCILMEMBER BAISA: Morning.

CHAIR MEDEIROS: Morning. We have Sol P. Kaho'ohalahala.

COUNCILMEMBER KAHO'OHALAHALA: Good morning, Chair.

CHAIR MEDEIROS: We have Michael P. Victorino.

COUNCILMEMBER VICTORINO: Aloha and good morning, Chair.

CHAIR MEDEIROS: Excused are Members Mateo and Molina. And we also have non-voting Committee Member Nishiki here. Good morning to everyone.

COUNCILMEMBER VICTORINO: Morning.

CHAIR MEDEIROS: I would like to also introduce the Staff that's here from the Administration. We have from the Corporation Counsel, Mr. David Galazin, Deputy Corporation Counsel. Good morning, David. And from the Department of Public Works, we have Director Milton Arakawa. Good morning. And from our Committee Staff, we have Ms. Camille Sakamoto, Committee Secretary; and Mr. Mike Geers, Legislative Analyst. Members, today we have two items on our agenda. The first item is IM-10 which is a resolution authorizing proceedings in eminent domain for acquisition of real property interests at Wailuku. The second item is IM-3, United States Environmental Protection Agency/State Department of Health Consent Decree Quarterly Progress Reports. At this time, I'll accept public testimony on these items. And those wishing to testify should sign up at the Secretary's desk. Testimony shall be limited to three minutes. The yellow light will indicate that you have 30 seconds remaining and should begin to conclude. Testifiers are requested to state their name for the record and to indicate who they are representing if applicable. At this time, may I please request that everyone in the Chamber disable their cellphones, either turn them off or put them on

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viber mode; or any other noisemaking devices you may have, please disable them so it'll minimize the disruption of the meeting. So at this time, Ms. Sakamoto, do we have anyone signed up for testimony this morning?

MS. SAKAMOTO: No, Mr. Chair.

CHAIR MEDEIROS: Okay, thank you. Anyone in the gallery wishing to testify, this is your opportunity to come forward to testify. And seeing in the gallery that we have our Staff members only, so we don't see anyone coming forward. . .Members, seeing that no one else is stepping forward to testify, without objection I will be closing public testimony.

COUNCIL MEMBERS: No objections.

CHAIR MEDEIROS: Thank you, Members. So ordered.

ITEM NO. 10: RESOLUTION AUTHORIZING PROCEEDINGS IN EMINENT DOMAIN FOR ACQUISITION OF REAL PROPERTY INTERESTS AT WAILUKU (MARKET STREET IMPROVEMENTS, WELLS STREET TO MOKUHAU ROAD, FEDERAL AID PROJECT NO. STP-3405(1) (C.C. No. 09-143)

CHAIR MEDEIROS: Our first agenda item, IM-10. Our first item this morning is IM-10 relating to the Director of Public Works request to authorize proceedings in eminent domain to acquire a perpetual non-exclusive drainage easement on property comprising approximately 720 square feet, with an estimated fair market value of \$756 for a Market Street Improvements Project to install 48-inch drainage line. The project is part of the American Recovery and Reinvestment Act of 2009, Federal Stimulus Funding Project in the amount of approximately \$6 million. Members, I would like to draw your attention to the proposed resolution transmitted by the Director of Public Works entitled: Authorizing Proceedings in Eminent Domain for the Acquisition of Real Property Interests at Wailuku, Maui, Hawaii for Market Street Improvements, including the area of Wells Street to Mokuhau Road, and Federal Aid Project STP-3405(1). I would like now to ask the Director of Public Works, Mr. Arakawa, to provide an overview of this item. Director Arakawa, if you would please?

MR. ARAKAWA: Thank you, Mr. Chair. As you noted, this item pertains to a proposed resolution authorizing proceedings in eminent domain for the acquisition of real property interests at Wailuku for the Market Street Improvements Phase II Project. A perpetual non-exclusive easement is proposed to be acquired in order to construct a 48-inch underground drainline. The proposed easement is 720 square feet in area and the proposed easement is located at the terminus of Lani Place in Happy Valley. I have circulated some reference maps for your review. And the proposed easement is part of a larger parcel TMK: 3-4-33 Parcel 24 which comprises 30,753 square feet. It is a long and slender property extending from Piihana Road to Iao Stream. This parcel contains an aboveground aqueduct which is part of the Spreckels Ditch. According to our appraisal the fair market value of the property we wish to obtain an easement on, that fair market

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value is \$756. We have done a title report, and the title report for the property shows that the owner is C. Brewer and Company, Limited, which is currently Wailuku Water Company, LLC. However, there is a dispute as to the ownership with Alexander & Baldwin. As part of the Grant of Easement document to the County of Maui which we have drafted, Wailuku Water Company, LLC has signed the document, and we have requested Alexander & Baldwin's consent. And thus far we have not been able to obtain the consent signature from A&B. Thus, we are requesting approval to authorize condemnation to acquire the easement for drainage purposes. We note that the Market Street Improvements Project is part of the American Recovery and Reinvestment Act 2009 Federal Stimulus Funding Projects in the amount of \$6 million. The State Department of Transportation has mandated that this project be ready to advertise for bid by this June 30th. In order to do that, we must show that we have land control for the property. Since we have been unable to obtain A&B's consent, the remaining alternative is to gain control through the condemnation process. Since there'll be insufficient time to draft a Committee report and accomplish two readings of the resolution by June 30, we would request that the Committee discharge this matter. And a separate request is being made to discharge the matter from the Committee and pass first reading to authorize proceedings in eminent domain at the June 5 full Council meeting. This would enable second reading of the resolution at the June 23rd full Council meeting. And we acknowledge that this is an unusual request because of the timing; however, the American Recovery and Reinvestment Act funding demands that certain deadlines be met by the end of June. So we respectfully request the Committee's support for discharge.

CHAIR MEDEIROS: Thank you, Director Arakawa. We hear from the Director the time constraints involved in this matter. So I ask you to consider that during your discussion. So at this time, Members, the Chair will open the floor for discussion.

COUNCILMEMBER VICTORINO: Chair?

CHAIR MEDEIROS: Member Victorino?

COUNCILMEMBER VICTORINO: Thank you, Chair. Noting that, that you have time sensitive on this, time sensibility on this issue here, my concern and in looking at these pictures, right away I become very leery. And I know this area and I know it's been considered a local neighborhood dump, you know, 'cause they dump all these vehicles and other waste in that area. Have we had any time to have Environmental Management or somebody go in there to double check on what the potential hazards that we may be dealing with? Because I, I understand the, the time sensitivity on this whole issue; however, I'd hate to have a midnight surprise walking in there and find it be something way out of our realm and get all kinds of extra issues developing. So could you answer that question? Has any studies been done or has anybody taken a moment to look into this?

CHAIR MEDEIROS: Director?

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MR. ARAKAWA: Yes, Mr. Chair. We are just requesting the easement; however, you did note the, the, it looks like abandoned cars and other trash in the area. We can work with Environmental Management as far as cleaning it up before we do the construction. Obviously, those need to be moved anyway to install the underground drainline.

COUNCILMEMBER VICTORINO: Right. Okay. So, so nobody's gone in there at this point in time? We don't have anything? Okay. And then the second question I have is, as far as the, the what you call, the ditch system that runs through there, will there be any affect with that ditch running across this easement area?

MR. ARAKAWA: No. We have no plans to affect anything regarding the ditch system. As you can see, it's an aboveground-system; and the drainline we are proposing is an underground drainline. So we have to trench and install the underground drainline.

COUNCILMEMBER VICTORINO: It wouldn't have any bearing on the, the structural integrity? I mean, you won't have any challenges with that?

MR. ARAKAWA: No, no.

COUNCILMEMBER VICTORINO: Okay. Okay, Mr. Chair, I'll let others ask questions and then if there is, I'll come back and...

CHAIR MEDEIROS: Okay. Mahalo...

COUNCILMEMBER VICTORINO: Thank you, Mr. Chair.

CHAIR MEDEIROS: Mahalo, Mr. Victorino. Committee Vice-Chair Pontanilla?

VICE-CHAIR PONTANILLA: Thank you, Chairman. One of the questions I was going to ask the Director is exactly what Mr. Victorino had brought up in regards to the abandoned vehicles that is noted on the photograph. The ARRA funding of \$6 million, I note that you have a Federal Aid Project STP-3405(1). When do you plan to start the project and, and what is the target date to complete the project once you receive these fundings?

CHAIR MEDEIROS: Director?

MR. ARAKAWA: Assuming we can clear up the land title issues and have the right to advertise by June 30th, we're, we have to basically advertise for bids, execute a contract and then issue a notice to proceed. We're looking at probably the later part of this year, if everything goes well, to start construction on the project. Once construction starts, it should take about, the better part of a year to complete construction.

VICE-CHAIR PONTANILLA: So in regards to stimulus money then, we have three years to complete the project, am I right?

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MR. ARAKAWA: . . . I am not certain with regard to this particular project itself. I know there are deadlines. I can, I can find out what they are. I'm not certain, know right offhand what they are.

VICE-CHAIR PONTANILLA: Yeah. Hate, hate to, you know, miss those deadlines, you know, once we receive stimulus money of this magnitude--\$6 million, it's a lot of money. So I look forward in your response in regards to, you know, how long it's going to take and if we're going to jeopardize that three-year project commitment. Probably not, but. Thank you, Chairman.

CHAIR MEDEIROS: Thank you, Vice-Chair Pontanilla. Any other questions? Yes, Member Baisa?

COUNCILMEMBER BAISA: Thank you very much, Chair. Just another incidental question. I, like everybody else of course, was fascinated by the opala lying around this site that we're going to be needing to buy. And it was mentioned that, you know, it would be coordinated with Environmental Management to take care of it. But I'm wondering are additional monies going to be needed in order to accomplish a cleanup? We found out cleanups are very expensive.

CHAIR MEDEIROS: Thank you for your question, Member Baisa. Director, if you would?

MR. ARAKAWA: Member Baisa, we can work with Environmental Management but the thing to keep in mind, to keep in mind here is that this is actually not, it's private property and we would basically look to the landowners to basically try to clean it up *first*, you know, before, you know, we, we expend our money to clean it up to put in our drainline. So that would be our, our first avenue of, the way we would want to go as far as approaching this problem.

COUNCILMEMBER BAISA: I don't want to, you know, rag on this, but are those landowners capable of that kind of expense? Who are we buying this from?

MR. ARAKAWA: It's Wailuku Water Company and A&B.

COUNCILMEMBER BAISA: They have money. I guess they can afford to clean up.

UNIDENTIFIED SPEAKER: . . . *(laughter)* . . .

COUNCILMEMBER BAISA: The question is, would they be willing to do it?

MR. ARAKAWA: They have, as you know they are large landowners and they have quite a problem with dumping in various places on their land holdings. And their, they have programs in which to get rid of all of their junk here and there. But it does cost them money.

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COUNCILMEMBER BAISA: Okay. As long as it doesn't cost us money 'cause, you know, this is really a small amount of money--\$756 is, you know, not, not a lot for us. But it could be substantially more if you get into the cleanup. I've seen the figures of what we pay to clean things up. Thank you very much.

CHAIR MEDEIROS: Okay. Thank you, Member Baisa. If I could, the Chair would just like to follow up one question from Member Baisa's--is, Director, if at the urging of the County, the property owners would first be requested to clean it up and if they *don't*, what would it take for the County to proceed to clean it up being that it's private property?

MR. ARAKAWA: We have an ordinance on the books. It's Community Beautification Ordinance and if push comes to shove we would basically give written notice to the owners to clean up the property and the trash that's on the property. And we give them a period of time to clean it up. If they don't, then we enter onto the property, clean it up and then bill the owner.

CHAIR MEDEIROS: Thank you for that response and that information, Director. Members, any other questions?

COUNCILMEMBER KAHO'OHALAHALA: Yeah.

CHAIR MEDEIROS: Member Kaho'ohalahala?

COUNCILMEMBER KAHO'OHALAHALA: Thank you, Chair. I'm just confused as to how we proceed with an eminent domain proceedings without knowing who the, the landowner is. And this is going to be a problem for us to proceed?

CHAIR MEDEIROS: Corporation Counsel, if you could respond to that?

MR. GALAZIN: Yeah. The nice thing about eminent domain proceedings is it establishes the County's ownership, in this case, of an easement and it leaves the court to determine, in terms of the money who has what ownership interests so it can determine who gets what portion of the monies. So from our standpoint the fact that there are title issues makes it more difficult to enter into an agreement with all the necessary parties, but it is no impediment to proceeding in eminent domain.

COUNCILMEMBER KAHO'OHALAHALA: So we proceed with a Resolution for eminent domain. We set aside an amount of money that's been stated here as \$756 as, yeah as appraised. And we leave the battle in the courts for the, the landowners to decide . . .*(inaudible)*. . .?

MR. GALAZIN: Yeah. That's, that's basically how it works.

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COUNCILMEMBER KAHO‘OHALAHALA: Would be interesting to know how those two landowners in fact own *it* . . .(laughter) . . .

CHAIR MEDEIROS: . . .(Laughter) . . .

COUNCILMEMBER KAHO‘OHALAHALA: Because when you look at the, the sources of these lands, you know, they’re Royal Patent. So very interesting processes. But I mean I see there the, the need to move on and I’ll support the, your recommendation, Chair. I’m just curious to understand how two people are beefing over who owns the land and it’s question as to how *they* own the land. Thank you, Chair.

CHAIR MEDEIROS: Mahalo, Member Kaho‘ohalahala. Any other questions? Member Nishiki?

COUNCILMEMBER NISHIKI: Thank you. The, the question that Sol brings up, Mr. Corporation Counsel, is something that concerns me. The County can go and condemn land without knowing who the owner is? I just find that hard to believe.

MR. GALAZIN: Yes, that’s, that’s correct because the, the State is sovereign, can’t be held up in, in government projects just as, in general terms, speaking of the eminent domain powers. The government in setting up its powers did not, did not want to be held up by private individuals in trying to accomplish its, you know, oftentimes public works tasks. So what happens is the court can decide the government gets this portion of the land in whatever form of ownership it has, and the real question of what it comes down to is who gets paid what amount of money because it has to be fair market value. It has to be a fair and reasonable amount of money. I mean it’s set forth in the Constitution that the government can take your property but only, you know, only with just compensation. So from the government’s standpoint, trying to parse out who exactly owns it--and, and in this situation I agree there are some title issues and, and I haven’t seen all of the documents so I couldn’t, I couldn’t speak to it specifically. But the fact that there are title issues shouldn’t hold up the government’s project; just the same way as, as a landowner trying to blackmail the government into saying he wants \$10 million for this can’t hold up the project.

COUNCILMEMBER NISHIKI: No, that’s not the point that I’m trying to bring up, Mr. Corporation Counsel. I’m bringing up what Sol mentioned, despite that he said well the question is, is do these people own the land. And my, my whole thing is participating with the thieves and then condemning this land when it’s not even their land. So how can we, without being a thief, make sure that there is clear title? Is that something that we can condition?

MR. GALAZIN: Well, what happens is that going through eminent domain actually clears the title pretty much better than anything else. You know the law requires that we publish notice that anybody who has an interest can go and be a part of these proceedings when it gets to court, and they can bring whatever evidence they have and put it before the judge

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so as, you know, as a finder of fact can determine okay, I see that these people actually have an interest in the land that was not recognized prior to this. And after the eminent domain action they, you know, they will have some compensation for their, for that interest that they held, if they do in fact have one that's, that can be proven in a court of law.

COUNCILMEMBER NISHIKI: So you will make sure that there is a condition that when we condemn this land there is clear title? Yes or no?

MR. GALAZIN: It's not a condition that we *put in* because when we condemn it our interest, our easement will be free and clear. That will, we'll have the clearest title possible in that easement. Whoever has it, an underlining [*sic*] ownership in that property will be paid compensation in the terms of how a court determines their percentage of ownership pans out. So the court will decide who has title. The court will decide in what portion and what proportion compared to everyone else, and the court will decide who gets that money. So if you're talking about if title issues will be resolved, can we condition that, no because the eminent domain action itself will, will clear up these issues.

COUNCILMEMBER NISHIKI: Clear the title. Question for Milton. I see where...who is paying this property tax now of \$100 a year?

CHAIR MEDEIROS: Director?

MR. ARAKAWA: Councilmember Nishiki, I believe A&B is playing, paying the property tax right now.

COUNCILMEMBER NISHIKI: Okay. So obviously. . .that's \$100 for 30,753 square feet. Is there or was there an appraisal done on, despite that it may not be that much money my, my concern still is who determined that that fair market value is 756?

MR. ARAKAWA: We did an appraisal. We hired an appraiser to appraise the property of the easement that we are wishing to acquire.

COUNCILMEMBER NISHIKI: Right.

MR. ARAKAWA: So it's only that 720 square feet that we're talking about that is worth, we believe it's worth \$756. And so basically it will be submitted to the court and the court basically decides again, you know, whether it is a fair amount and who gets it.

COUNCILMEMBER NISHIKI: Okay. Thank you.

CHAIR MEDEIROS: Thank you, Member Nishiki. Members, any other questions or discussion?

COUNCILMEMBER BAISA: Recommendation?

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CHAIR MEDEIROS: Okay. Before I do that, I just want to mention that as the Director has said--and I, I think Member Nishiki and Member Kaho'ohalahala raise very important points about land ownership and land title. But as described by Corporation Counsel, under the Hawaii Revised Statutes, the State does give the County the authorization and empowers the County to go through the proceedings of eminent domain when it becomes in the interest of the public. And, and we see, you know, quite often that we have other eminent domain proceedings when it has to do with other kinds of infrastructure or facilities for the County. But according to the Director as he explained, receipt of the Federal funding for this project is contingent upon this matter being approved in June of 2009. And under the law, resolutions authorizing eminent domain proceedings must pass two readings pursuant to Section 101-13, Hawaii Revised Statutes, by a majority vote of the Council. Because of the time constraints, the Infrastructure Management Committee, as expressed by the Director, will be unable to formally transmit a report to the Council for consideration at the Council meeting of June 5th, 2009. In order to facilitate this process, the Council will be asked to consider discharging this Committee from further consideration of the item at its meeting this Friday, June 5th, 2009. So in, in making my recommendation in keeping with the request to discharge the Committee that is posted for Friday's June 5th, 2009 Council meeting and in order to meet Federal funding time constraints, the Chair has posted a request that the Committee be discharged of this matter--which will be considered by the Council at its meeting this Friday, June 5th, 2009. At this time the Chair's recommendation would be, therefore, to recommend that this item be deferred. And if there are no objections, Members, the Chair would defer this item.

VICE-CHAIR PONTANILLA: . . . No, no objections.

COUNCILMEMBER VICTORINO: Second.

CHAIR MEDEIROS: Okay, no objections?

COUNCILMEMBER KAHO'OHALAHALA: No objection.

COUNCILMEMBER VICTORINO: No objections I should say.

CHAIR MEDEIROS: Member Nishiki?

COUNCILMEMBER NISHIKI: Yeah. I just want to speak to the deferral. And, and, and the concern has to be with Native Hawaiians who had now as we've heard today had to come forward and go through this process. If you're sophisticated, if you're educated you may still not have the energy or time to go through this process, Mr. Chairman. And because of this, a lot of Native Hawaiians have lost their land. This was done by a certain group of people that have really taken over the land ownership here in the State of Hawaii. And I say this only because I feel like I'm participating in this process of again taking land from the people that deserve to own it, because they cannot or they may not be able to

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afford a lawyer, as Mr. Corporation Counsel says, to go to court. You know we say we've created a process for people to go and get back their land, but really, Mr. Chairman, and, and we Council people that have been elected really need to take a good look at this, of whether every time we go and get a land and it, it's a Royal Patent and now we're saying hey, you know, if you think you own this land then go through this process, go hire a lawyer. People don't have time, people don't have money, many people, to do this, Mr. Chairman. So really we say that there's a venue, but really is this a venue? I think it's BS, to be honest with you. I think that if we really want to do right, we should also be a participant in trying to find out who the owners are. . .we in County government and, and help them. To me, *that's* our responsibility if we are to be fair. Let's not be part of the thief, perhaps, that have taken this land and have claimed it. So I have concerns today and so I just want to represent those concerns. Thank you.

CHAIR MEDEIROS: Thank you, Member Nishiki. Certainly your thoughts have your merits to it and we have, you know, gone through discussions on this matter in other items . . .(*Change Tape, Start 1B*) . . . for this body, and I know with my inquiry with Corporation Counsel on this very matter in other items that the response was that we as a body do not have any authority on deciding land ownership, that it would have to go to court. So I think, Member Nishiki, you expressed it well--that some members of the community that may find that they have interest in properties may not have the means to go to court. But at this point, you know, that's where it stands as far as Corporation Counsel has explained. Any further discussion or questions? Vice-Chair Pontanilla?

VICE-CHAIR PONTANILLA: Thank you, Chairman. So this item will be deferred to the June 5th, 2009 Council meeting?

CHAIR MEDEIROS: Member Pontanilla, I'm going to ask our Legislative Analyst or Corporation Counsel because there was no objections from the voting Members and one from a non-voting Member if indeed this is, received no objections and will be deferred.

COUNCILMEMBER ____: . . .(*inaudible*) . . . discharged?

COUNCILMEMBER KAHO'OHALAHALA: Wasn't discharged.

CHAIR MEDEIROS: Staff?

COUNCILMEMBER ____: Yeah, yeah, yeah.

MR. GEERS: Chairman Medeiros, that's correct. If no objections, it will be deferred to the June 5th Council meeting.

CHAIR MEDEIROS: Okay. If no, no objections from the voting Members?

MR. GEERS: Correct.

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CHAIR MEDEIROS: Okay. Vice-Chair Pontanilla, any further questions?

VICE-CHAIR PONTANILLA: Thank you. I, I thought that this Committee would have discharged this matter to the upcoming Council meeting with a "for" or "against" Resolution.

CHAIR MEDEIROS: Yeah. It is --

VICE-CHAIR PONTANILLA: Thank you.

CHAIR MEDEIROS: --our intent as a Committee, and I have already sent correspondence to the Council Chair, in taking that process of discharging this Committee. At this point, we are going to defer this item, and if it is in the June 5th meeting discharged, then we will complete the action on, on this item.

VICE-CHAIR PONTANILLA: Thank you, Chairman. Because of the request by the Director that this item need to be approved by June 30th.

CHAIR MEDEIROS: Correct. And if it's discharged in the June 5th meeting, we will, I believe, Staff, if you could also confirm what I'm saying--is that we're going to ask for also a first reading at the same time. And that will allow for a second meeting in the June 20...23rd Council meeting which will finalize that, this particular item.

VICE-CHAIR PONTANILLA: Thank you.

CHAIR MEDEIROS: Thank you, Member Pontanilla. Member Kaho'ohalahala?

COUNCILMEMBER KAHO'OHALAHALA: Thank you, Chair. I just wanted to expound just a little bit more about, you know, why I'm going to move ahead to support your, your recommendations in light of the situation for Public Works. But I, I think by raising some of these issues here about land ownership in processes like this, I have one more question for the Corporation Counsel. By us moving ahead with this condemnation process, does it now require that the dispute between these two landowners actually go to court to come to some resolution about whom should be compensated for this condemnation?

MR. GALAZIN: They don't necessarily *have to* appear in court, but I'm sure, I, I would expect that, that both parties because they still haven't come to any kind of consensus on ownership would participate in the commendation action if it's passed on and, if so, once it were filed. They need not, they need not be present for a court to make a determination.

COUNCILMEMBER KAHO'OHALAHALA: And so is there a situation where this funds that we set aside for compensation be left in some sort of a limbo situation where there's no one that's been cleared in terms of title?

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MR. GALAZIN: As far as I know in a commendation proceeding, a court will determine that *somebody* gets the money. I'm not familiar with a situation where the court has said we can't figure it out so we're just going to hang on to it. The whole purpose is to say that the only way that we can get an interest in this property, you know, under the US Constitution, is if just compensation is paid to the right person.

COUNCILMEMBER KAHO'OHALAHALA: To someone. To the, the owner --

MR. GALAZIN: Yeah.

COUNCILMEMBER KAHO'OHALAHALA: --of the property?

MR. GALAZIN: And so the court, that's the court job--is to say okay, who gets this money.

COUNCILMEMBER KAHO'OHALAHALA: Okay. And then, Chair, just because, you know, it's been raised here about who are the, the, the appropriate or the, the rightful owners of land, I think part of our process here and as legislators in the Council is to make sure that we put out information that is available . . .*(inaudible)*. . . our constituents and to our communities. And perhaps this is the time now to at least talk about these things so that they have some knowledge or, or understanding about these procedures we are involved in. And I, and with that I just want to at least add is that we have attached in our information about this condemnation process the metes and bounds of the, the parcel that we are talking about. And if I may, I just wanted to add that information for the record so that those who are listening or viewing this proceeding will understand what we are talking about when we make reference to who might be the, the rightful landowners. And if I may, I just want to cite what it says in here about the, the metes and bounds. It says situated in Wailuku, Maui, Hawaii, being portions of Royal Patent 6582 and 6786, Land Commission Award 2424 to Kawaapalaole and Royal Patent 6495, Land Commission Award 9032, Apana 4 to Kikane. So these are the original landowners of the parcel that's in question. And I think what we're raising here is that if these are the original landowners and then we have a dispute today between C. Brewer and A&B who are now claiming that they are the landowners, we should all note that these are the *original* awards to those people by those names. So we're talking about the Kawaapalaole family, and we're talking about the Kikane family. And if they are hearing this proceedings, they should also know that a process will be engaged in trying to determine who will be compensated for this condemnation of the lands. And that *is* part of our responsibility--to make sure that information gets out. So I wanted to add that much. But understanding our processes, Chair, I'm going to move ahead to support your recommendation for discharge, and we will take up the matter in the full Council meeting. But at least we've had a chance to let people know what is about to occur. So thank you for that.

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CHAIR MEDEIROS: Okay. Member Kaho'ohalahala, thank you for that. And I think we all will have another opportunity or opportunities in the Council meeting to provide that kind of information also for our constituents. Member Baisa?

COUNCILMEMBER BAISA: Thank you very much, Chair. But before we proceed to vote, I was wondering if the Public Works Director had any comments on this action?

CHAIR MEDEIROS: Before you respond, Director, Member Baisa, there will not be any vote. We have deferred this item.

COUNCILMEMBER BAISA: I, we've agreed?

CHAIR MEDEIROS: Yes. There was no objections from the voting Members.

COUNCILMEMBER BAISA: I guess I was sleeping at the switch. I thought we were going to do that?

CHAIR MEDEIROS: I, I asked if there was any. I made my recommendation to defer. I asked if there were any objections. There weren't any from the voting Members. Member Nishiki raised some concern and a possible objection, but according to our Legal *[sic]* Analyst, that Member Nishiki not being a voting Member would not affect the "deferred" recommendation with an objection.

COUNCILMEMBER BAISA: So no further action will be taken on this item?

CHAIR MEDEIROS: This will be deferred and as I, I mentioned earlier I have, as the Committee Chair, forwarded a recommendation or a request to the Council Chair --

COUNCILMEMBER BAISA: Right.

CHAIR MEDEIROS: --for a discharge. And that's, be the next action on this item.

COUNCILMEMBER BAISA: I understand that. I'm talking about today. So that's it?

CHAIR MEDEIROS: That's it as far as this item in our Committee. Yes.

COUNCILMEMBER BAISA: Okay. May I still have that before we close? I would really appreciate that.

CHAIR MEDEIROS: What, what would you like to have, Member Baisa?

COUNCILMEMBER BAISA: Does the Public Works Director have any comment --

CHAIR MEDEIROS: Okay.

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COUNCILMEMBER BAISA: --on the deferral?

CHAIR MEDEIROS: Okay. Director?

MR. ARAKAWA: Mr. Chair, as far as the deferral is concerned by the Committee, you know, as I mentioned before, our main point is we want to be able to have land control of the easement by June 30th. So if you can accomplish that by June 30th I'm, I'm fine with that.

COUNCILMEMBER BAISA: Okay. That was all I was concerned about because I understand this is part of a very large project, and these ARRA funds are so time sensitive that we have to be really careful. But *I do* understand the issue that has been brought up and I think it's important. Thank you, Chair.

CHAIR MEDEIROS: Thank you, Member Baisa. And as added information, when this goes to Council for a discharge request, I'll be making about five different motions. Part of that will be, if the discharge is successful, we will make a motion to file and so forth. So the item will no longer be with this Committee once it gets to Council.

COUNCILMEMBER BAISA: Okay. I think I would, just didn't follow the procedure. Thank you.

CHAIR MEDEIROS: Thank you, Member Baisa. Members, if there are no further questions, we have decided as a Committee that this item will be deferred.

COUNCIL MEMBERS VOICED NO OBJECTIONS. (excused: DAM and MJM)

ACTION: DEFER pending further discussion.

CHAIR MEDEIROS: Thank you. So we'll move on to the second item on our agenda and, while we make administrative changes here for representing this next item.

NOTE: Pause.

UNIDENTIFIED SPEAKER: . . .(laughter). . .

NOTE: Very long pause.

ITEM NO. 3: UNITED STATES ENVIRONMENTAL PROTECTION AGENCY/STATE DEPARTMENT OF HEALTH CONSENT DECREE QUARTERLY PROGRESS REPORTS (C.C. No. 09-32)

CHAIR MEDEIROS: . . . Members, thank you for your patience on that. We will be on item number two on the agenda, IM-3. Our second item, IM-3, relating to United States Environmental Protection Agency and State Department of Health Consent Decree

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Quarterly Report. Members, I would like to draw your attention to the quarterly report transmitted by the Director of Environmental Management entitled County of Maui Department of Environmental Management, Wastewater Reclamation Division, which is USEPA and the DOH Consent Decree. This Quarterly Progress Report #38 covers the period from October 2008 through December 2008. And before we proceed further, I'd like to introduce the Administration representatives that are here with us this morning: the Deputy Director of the Department of Environmental Management Gregg, Mr. Gregg Kresge; and also here the Chief of the Wastewater Reclamation Division, Mr. David Taylor. Good morning, gentlemen.

MR. KRESGE: Good morning.

CHAIR MEDEIROS: Thank you for being here. So at this point, I would like to ask the Deputy Director of Environmental Management, Mr. Kresge, to provide an overview of this item. Deputy Director?

MR. KRESGE: Yes. Thank you, Chair. And good morning, Council Members. The Environmental Management and Wastewater Division in particular, we're pleased to present this report that we present to you on an annual basis. This is actually Report No. 38. And included in this report are the items that address the Consent Decree that was given by the EPA. And this covers operations and, and maintenance of the facilities for the Wastewater Division. And in the report, you can see that it goes over several items that are included in that operation and maintenance. And, and then I would like to turn it over to Dave Taylor for some additional comments. And we have, we're here to answer your questions. Thank you.

CHAIR MEDEIROS: Thank you, Mr. Kresge. Mr. Taylor, please?

MR. TAYLOR: Thank you. Just a few additional comments. The County entered into the Consent Decree with the EPA in 1999. As part of the Consent Decree requirements, we are required to submit quarterly reports to EPA about our performance to meet the Consent Decree requirements. And once a year, every fourth quarter the Council is sent a copy of the quarterly report so also Council can be aware of our progress. So this is a standard annual visit by us to go over the, the quarterly report for the last duration.

CHAIR MEDEIROS: Thank you, Mr. Taylor. Members, before I open up the floor, I want to ask the Department representatives a question that I'm not sure what the answer is. I think it was brought up before and there was an explanation which escapes my memory at this point. But on your report, the front page says "Quarterly Progress Report #38", and then if you turn to Page 1 on the third paragraph, it says "This is the thirty fourth quarterly report". Can you explain to me why the numbers are not the same?

MR. TAYLOR: Yeah. Thank you, Mr. Chair. On Page 1 the written "thirty fourth" words, that is a typo, 38 is the correct number, and I think in the word processing that was missed when we generated this document. So it should be 38 and they should be consistent.

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CHAIR MEDEIROS: Okay. Thank you for that clarification. And before I open the floor, also I'd just like to make this information known to you, Members. The quarterly report is informational, no legislative action is required. The report is available for the public viewing at the County website which is www.co.maui.hi.us, and additionally all past quarterly reports are also available for inspection on the website.

. . . And let me see, I had another--and I want to also provide this information for your consideration, Members, that the Consent Decree, part of the requirements is it requires the County Council, County government to provide a budget in order for the Department to accomplish and meet the compliance of the Consent Decree. And in our Fiscal Year 2010 Budget under Sewer Fund, Countywide, the EPA Consent Decree Wastewater Reclamation Facility renovation projects, we appropriated \$500,000. Also under the EPA Consent Decree compliance projects we also appropriated \$500,000. So that is information for you, Members, to consider, and at this point I now will open the floor for discussion. Members?

NOTE: Silence.

CHAIR MEDEIROS: . . . No questions or discussion?

NOTE: Silence.

CHAIR MEDEIROS: Okay.

NOTE: Silence.

CHAIR MEDEIROS: The Chair is going to take a short recess, Members, at the call of the Chair . . .(gavel). . .

RECESS: 9:49 a.m.

RECONVENE: 9:51 a.m.

CHAIR MEDEIROS: . . .(gavel). . . Members, the Infrastructure Management Committee meeting of June 1st, 2009 is now reconvened after the recess. And after consultation with our Staff and before I go into the recommendation, I would like to ask the representatives from the Administration, from the Department--in this report, are there any concerns we should have? And, and before you answer that, I want to say that. . .and, and acknowledge and compliment the Department for this very comprehensive and extensive report. I think it's very well-done and I'm sure part of it is that you have to meet the requirements of the Consent Decree. But do the Members of this Committee need to be concerned when, with any noncompliance items on the report?

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MR. TAYLOR: Thank you, Mr. Chair. We're concerned with everything in the report and, and I think the Council Members should be concerned with everything in the report, in the report now and, and forever. The report generally lays out, and the Consent Decree itself is about best management practices for the long-term operation of the wastewater system to avoid violations of the Clean Water Act. Even if the Consent Decree was yanked tomorrow, we wouldn't, we would still need as a community to follow everything the Consent Decree says to do because it's just best management practices. So I, I think what you can read in the Consent Decree is there's nothing specific that, that I think anyone needs to be concerned about in noncompliance. We're in compliance with the Consent Decree. And I think you've seen--because the Consent Decree is basically a best management practices to avoid sewage spills--I think compared to a decade ago there, there's much, much less sewage spills than there used to be. So I think our actions have worked and I think you can see the results have worked. I think the biggest concern is that the future is going to be just as difficult or more difficult than the past, and we know we come in with these very large budgets and lots of projects, *that's* what's necessary. So I think the concern isn't anything specific, but it's in general saying this isn't going to go away. The next 20 years, we are going to be fighting this battle against the aging infrastructure of our wastewater system and we're going to have to stay on top of it. So it's not something that is going to go away. We're not going to really finish the Consent Decree and then be done with this. It's something that's going to be sort of chronic for the rest our, our careers and, and that I think is a concern that we should all have.

CHAIR MEDEIROS: Any further comments from the Deputy Director?

MR. KRESGE: I, I can just add that, you know, like Dave said that we do come in for these large budgeted items and a lot of it has to do with the aging infrastructure. And we know that originally a lot of this infrastructure was funded with Federal funds and now those Federal funds are not there. So we are left with this great infrastructure that was left with us and, and that we had funded through other sources, and now we're, we need to maintain that with our own sources. So anyway just to remind, you know, the Council that this is an ongoing process. It's not going to stop. There's not a dead, you know, a finish point to this--this, this. . . maintenance requirements and best management practices are going to be necessary for the life of the infrastructure.

CHAIR MEDEIROS: Thank you, Deputy Director.

. . . I, I do have some questions after reviewing this very lengthy and comprehensive report. Let me start with. . . it is said that this is the, this is the last quarterly report of 2008, is that correct, being that it's from October to December 2008?

MR. TAYLOR: That is correct.

CHAIR MEDEIROS: Okay. In this report it says that there's a requirement to flush 211,000 linear feet per year in compliance with that requirement. And in the report it says year-to-date under that requirement that we have flushed 37,655 linear feet. So what I'm

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asking is am I understanding the information wrongly in that there doesn't seem to be a compliance with that 211,000 linear feet requirement?

MR. TAYLOR: Thank you, Mr. Chair. The requirement of the Consent Decree is that every line is flushed once every five years. So on average it comes out to the number you quoted. We can get ahead in some years and fall behind in other years. As long we're over the five, as long as over five-year period everything's flushed once. So our crews, because they balance between preventative maintenance and things like flushing, plus supporting other maintenance and replacement and operational needs, some years we'll do a lot more, some years we'll do less. So our goal is we track. . .are we keeping up with the five years? And in this case, you know, we didn't do, we did *below* average which means maybe the year before or next year we'll do above average. And that's part of our normal maintenance. . .process--is to, is to balance the crews to get all the work done.

CHAIR MEDEIROS: Thank you. And following up on that, I read in the report where you have a weekly periodic flush that totaled 278,055 linear feet. So what is the difference between the 37,655 and the 278,000?

MR. TAYLOR: Every line, by the Consent Decree, has to be flushed every five years. So if we have lines that seem to have problems--for whatever reason they tend to have grease buildups or they tend to have more sewage spills--we'll put them on either a quarterly or even a monthly or even a weekly flushing schedule to flush them *more* than the Consent Decree requires. Again even if there was no consent decree, we would do that anyway. So different pipelines just require different maintenance frequency. So every, every pipeline--*regardless* of its condition--gets flushed every five years, others more frequently depending on their need.

CHAIR MEDEIROS: Thank you. And, and just so that the Members can follow my line of questioning, this is on the report, Page 2, last paragraph. January 2009 is the final year of the five-year cycle, is that correct? I mean January 9, January 2009 starts the final year of the five-year requirement?

MR. TAYLOR: That's correct.

CHAIR MEDEIROS: Okay. So if the plan was approved in, in May of 2000 and it was approved in court the previous year November 1999, why is the five-year not 2005 instead of 2009? Did you initiate this plan when it was approved in May of 2000?

MR. TAYLOR: I am not sure of the answer to that. A number of the portions of the plan, we had to do all sorts of investigation first to inventory systems, set up what the procedures were, get the procedures approved by EPA and then implement. So we didn't implement everything on the day the Consent Decree was entered into. The first phases were to figure out what, what the procedures were going to be. So I imagine it has something to

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do with the early, the early years were probably spent working out exactly what the implementation plan was, and at some point there was a start date.

CHAIR MEDEIROS: Okay. Thank you for that explanation. On the same page, Page 2, last paragraph, it says the system was flushed 74 percent completed. And being that this is the last year of the five-year cycle will that 26 percent be accomplished to have a 100 percent completion by the end of this year?

MR. TAYLOR: That would be the goal.

CHAIR MEDEIROS: Okay. Thank you. Page 3, Item No. 2, who are the appropriate personnel identified in this as far as training? Are there just certain personnel that are trained and others are not?

MR. TAYLOR: Everyone in our Division gets some level of training depending on their, their place in the Division. So everyone who starts gets *some* type of training. There is a consent decree, here's what we do. So even if you're hired as, for example, the plant worker where you work at the plant, you take care of the, the landscaping and things, you'll get some training about what is the Consent Decree. If you're hired as an engineer where you're doing Capital Improvement Projects, you're going to get a lot more training. So everyone gets *relevant* training based on, on their, based on the, what is the Consent Decree, why is it here and then what is the role of, of somebody in your position and how does it relate to that.

CHAIR MEDEIROS: Thank you. And then on, it wasn't a page but it's after Page 15, and it identifies permit inspections. And I think it's Attachment A, and it, it goes from Page 1 through 18 in Attachment A. I, I was absolutely not realizing how much places you folks have to inspect. It was like 160-something?

MR. TAYLOR: I don't know the number, but if you counted them that's --

CHAIR MEDEIROS: Right.

MR. TAYLOR: --that's how many we...

CHAIR MEDEIROS: And, and I'm interested to find out what is inspected. Do you go there and be sure that their permit is current or do you do any physical inspections?

MR. TAYLOR: The County ordinance which goes over Fats, Oils and Grease program in the wastewater system dictates that every commercial establishment that fits under certain classification, which is generally restaurants, have grease traps. I mean to simplify it most, it covers a lot of industrial uses. But on Maui, it's mostly about restaurant grease traps. So what happened is each restaurant owner had to submit grease trap calculations, how much grease they generate, how much business they do, what size grease trap they need. That got installed, that all was approved through a permit process. Now there's an

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ongoing permit inspection process where our staff makes sure they're in compliance where, that they're having it maintained, pumped, they have records, they're operating it correctly, it's hooked up to the things it's supposed to be hooked up to, they haven't made disconnections of things that are supposed to be hooked up, et cetera. So we could even take samples of what's in there, et cetera, et cetera. So that's what our ongoing permit inspections of the grease trap program are about.

CHAIR MEDEIROS: Thank you, Mr. Taylor. I'm totally impressed that you guys can inspect that many places. Now are the inspectors from your Division?

MR. TAYLOR: The, the inspectors is, is one guy. We have one inspector who runs this program and one administrator who administrates it in the office. So there's only two people in the entire pretreatment program.

CHAIR MEDEIROS: And is his title like an inspector or is just part of his work?

MR. TAYLOR: He does that full time. I believe his title is Pretreatment Inspector. But he is basically almost 100 percent of his time in the field, and he goes through this list from A to Z every year and then starts over.

CHAIR MEDEIROS: Thank you. And finally on page that is called Attachment C, I see where there's a report on spills and overflows. What is the difference between "overflow" and a "spill", being that it was a separate report?

NOTE: Silence.

CHAIR MEDEIROS: The --

MR. TAYLOR: I am not sure where...

CHAIR MEDEIROS: --I, I believe the overflow is on Attachment C. And I read a previous report of that report that, that you listed. I think under the spill, there were only two. I think one was Kihei, one was Wailuku, and another one. And I know, I think under the spill, it's separated as to "spills that got into waterways" and "spills that were on the ground only". But I just wanted to know what is the difference between an "overflow" and a "spill"?

MR. TAYLOR: A lot of times the words are used interchangeably.

CHAIR MEDEIROS: Okay.

MR. TAYLOR: We're operating under two Consent Decrees. One is from the EPA. One is from the Department of Health. The EPA Consent Decree is tied to . . . (*Change Tape, Start 2A*). . . The Federal Clean Water Act basically is about waters of the United States which is the ocean, streams, waterways that run to the oceans. So that's where the EPA

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Consent Decree and the document you have in front of you is concerned with. If we overflow sewage and it goes into somebody's yard and soaks into the grass, that is not a violation of the Consent Decree, of, of the Federal Clean Water Act. So this Consent Decree does not cover that. So we have *another* Consent Decree from the State Department of Health which covers those spills, which are spills or overflows which don't go to waters of the United States, which go to ground. So I think that's primarily, when you look at these reports, that's really how they're divided up. It's overflows that are regulated by the Federal Clean Water Act versus overflows and spills that aren't. I think that's, regardless of how the words are used, that, that's really the big difference.

CHAIR MEDEIROS: Okay. And thank you. So say you have a malfunction in the plant and it overflows in the plant, that's considered an overflow on the ground?

MR. TAYLOR: That would be a spill to the ground if it didn't go into any drainage way that went to the ocean, and that would be something we'd have to clean up and we just deal with the Department of Health. The EPA has no real jurisdiction over that. But the Department of Health does--and again we're still under a consent decree with them for those.

CHAIR MEDEIROS: Okay. Thank you so much. You know I didn't mean to ask you that many questions, but many times these reports come through. . .handled mechanically. It's just like a routine thing--we receive it and then we file it. So I, I want to once again say and acknowledge the Department and the Division for this really comprehensive report--that reading through it completely gave me a better understanding of the Consent Decree and what your requirements were. So I thank the Department for doing that. Members, any other questions?

VICE-CHAIR PONTANILLA: . . .*(inaudible due to interruption)*--

CHAIR MEDEIROS: Vice-Chair Pontanilla?

VICE-CHAIR PONTANILLA: Thank you, Chairman. Just a comment to Mr. Taylor and the work that their Division does for the Maui, for Maui County. You know going through this report, there's a lot of schedules that need to be met that, you know, I commend Mr. Taylor for taking an aggressive look and, and having a, you know, real good maintenance program to cover these things. The other thing that, you know, I want to commend Mr. Taylor, you know, he has a Capital Improvement Project from 2010 to 2015 that we need to look at. And, and these again are, you know, trying to satisfy EPA as well as the Department of Health Consent Decrees. So I commend the Department for doing, to me, an excellent work in regards to wastewater. Thank you.

CHAIR MEDEIROS: Thank you, Vice-Chair Pontanilla. Members, any further questions? Members...Member Kaho'ohalahala?

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COUNCILMEMBER KAHO‘OHALAHALA: Thank you, Chair. Gregg, I don’t, I don’t know your last name.

MR. KRESGE: Kresge.

COUNCILMEMBER KAHO‘OHALAHALA: Kresge?

MR. KRESGE: Kresge.

COUNCILMEMBER KAHO‘OHALAHALA: Kresge. Okay. You’re with the Department of Health?

MR. KRESGE: No. I’m the Deputy Director for Environmental Management.

COUNCILMEMBER KAHO‘OHALAHALA: Environmental. So you’re overseen by the Department of Health and EPA, is out of the Department of Health?

MR. TAYLOR: Actually, we’re overseen by both the Department of Health *and* the EPA. Department of Health in Hawaii mostly acts as the *agent* of the EPA --

COUNCILMEMBER KAHO‘OHALAHALA: EPA.

MR. TAYLOR: --in these matters ‘cause there are no...

COUNCILMEMBER KAHO‘OHALAHALA: So you’re dealing with the same person in the Department of Health that looks at both areas of concern, EPA Consent Decree as well as the other?

MR. TAYLOR: No. Actually, we don’t. We deal with a number of different people. The way DOH is organized, there’s Clean Water people, there’s Wastewater people, and there’s Safe Drinking Water Act people. And they’re all in the same Department. They’re all under the Environmental Management or the, I think it’s the Division of, I think it’s the Environmental Management Division. Then they have, or branch . . .(*inaudible*). . .

COUNCILMEMBER KAHO‘OHALAHALA: So their, the Department of...

MR. TAYLOR: We deal with a lot of different people who have overlapping responsibilities.

COUNCILMEMBER KAHO‘OHALAHALA: They’re the authorized agent then for the EPA?

MR. TAYLOR: That’s correct.

COUNCILMEMBER KAHO‘OHALAHALA: Okay. And then in, in the spill report as I was looking on the Iliili Road, in your conclusions it says that the spill was considered to be a contractor-related spill.

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MR. TAYLOR: Which one are you talking about?

COUNCILMEMBER KAHO‘OHALAHALA: The Iiili Road in Kihei. It’s --

CHAIR MEDEIROS: Member...

COUNCILMEMBER KAHO‘OHALAHALA: --November 14, 2008.

CHAIR MEDEIROS: Member Kaho‘ohalahala?

COUNCILMEMBER KAHO‘OHALAHALA: Yeah?

CHAIR MEDEIROS: You have a reference page number. . .or close to it?

MR. TAYLOR: I know where it is. It’s, they’re in, they’re in chronological order the spill reports. I’m looking at the same thing you are.

COUNCILMEMBER KAHO‘OHALAHALA: Yeah. So as, as I’m looking at that, then you’ve, you’ve determined that the, it was related to, I guess, a manhole. So when it’s determined in your assessment that it’s related to someone--in this case, are you relating to the contractor who was responsible for that construction of the manhole or, or the area where the spill was located? Can you just clarify so I understand?

MR. TAYLOR: In, in *general* the reason we will usually write down who was responsible is if we feel that somebody who was not under our umbrella authority was doing work and, and caused a problem, we don’t want to get the fine for that. So that’s usually the reason that that will be identified.

COUNCILMEMBER KAHO‘OHALAHALA: Okay. So...

MR. TAYLOR: We’re, we’re trying to say did, did, did, did our staff or our system have a failure, did a contractor under our authority have a failure, or that somebody working out in the roads or something that had nothing to do with us.

COUNCILMEMBER KAHO‘OHALAHALA: Okay. So then you...

MR. TAYLOR: So that’s why we try to identify that sometimes.

COUNCILMEMBER KAHO‘OHALAHALA: Yeah. You’ve answered my question. Then my question was who is fined in this case, you know, for the, for the violations or?

MR. TAYLOR: In that case I don’t want to say too much about this because the County is in litigation with some, a private landowner over this case, so I’d really. . .would not, would choose not to add anything in open session ‘cause it’s in, in pending litigation.

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ABSENT: None.

EXC.: Councilmembers Mateo and Molina.

MOTION CARRIED.

ACTION: Recommending **FILING** of communication.

CHAIR MEDEIROS: Members, we are, this concludes the Committee's business for the day. If there's no further comments or announcements, the Infrastructure Management Committee meeting of June 1st, 2009, at 10:14 a.m., is now adjourned. . . .(gavel). . .

ADJOURN: 10:13 a.m.

APPROVED:



BILL KAUAKEA MEDEIROS, Chair
Infrastructure Management Committee

im:min:090601

Transcribed by: Daniel Schoenbeck

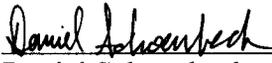
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CERTIFICATE

I, Daniel Schoenbeck, hereby certify that the foregoing represents to the best of my ability, a true and correct transcript of the proceedings. I further certify that I am not in any way concerned with the cause.

DATED the 16th day of June, 2009, in Pukalani, Hawaii.



Daniel Schoenbeck